

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 05-10243-RGS

STEVEN H. MALLEN  
and  
WILLIAM J. MALLEN

v.

CITY OF BOSTON/ BOSTON PUBLIC  
SCHOOLS  
and  
ANTHONY POMELLA

ORDER ON REMAND

August 17, 2005

STEARNS, D.J.

This case is before the court after having been removed from the Suffolk Superior Court on federal question grounds. Count III of the Complaint alleges a claim under the federal Whistleblower Protection Act of 1989, 5 U.S.C. § 2302. To sustain a claim under the Act a plaintiff must be “an employee in, or applicant for, a covered position in an ‘agency’...or a Government corporation as defined in section 9101 of title 31.” 5 U.S.C. § 2302(A)(xi). “Agency” is defined as “an Executive Agency and the Government Printing Office.” 5 U.S.C. § 2302(a)(2)(C). A list of federal agencies is provided as the definition of “Government corporation” in 31 U.S.C. § 9101. It being undisputed that plaintiffs were not federal employees, but employees of the City of Boston at the time the claim is alleged to have accrued, the court must DISMISS Count III.

As the foundational federal claim has been dismissed, the court will decline jurisdiction over the pendent state law claims and will ORDER that the case be REMANDED to the Suffolk Superior Court. See Camelio v. American Federation, 137 F.3d 666, 671 (1st Cir. 1998).

SO ORDERED.

/s/ Richard G. Stearns

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UNITED STATES DISTRICT JUDGE